

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHARLIE WILLIAMSON and
KONNIE WHEELER,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

PCHB No. 78-153

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of an Order of Cancellation of Ground Water Permit No. G3-01290P (QB-37A), came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David A. Akana (presiding) at a formal hearing in Spokane, Washington on December 19, 1978.

Appellants were represented by their attorney, Lawrence L. Tracy; respondent was represented by Robert E. Mack, Assistant Attorney General.

Respondent filed two Motions to Dismiss the instant appeal on grounds of lack of jurisdiction, failure to state a claim of action on

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1 which relief could be granted, and lack of standing of appellant
2 Williamson. The Motions are denied.

3 Witnesses were sworn; exhibits were admitted; counsel made written
4 closing statements.

5 Having heard the testimony, having examined the exhibits, and
6 being fully advised, the Board makes these

7 FINDINGS OF FACT

8 I

9 On March 17, 1975, the Department of Ecology (hereinafter
10 'Department') issued Permit No. QB-37A for artificially stored ground
11 water to appellant Charlie Williamson (hereinafter "Williamson"). On
12 the application and permit, Williamson had requested 500 gallons per
13 minute, 140-acre feet, for the withdrawal from and irrigation of two
14 20-acre parcels within the east one-half of the northeast quarter of
15 the southeast quarter and the west one-half of the northwest quarter
16 of the southeast quarter in Section 23, Township 18 North, Range 24
17 E.W.M., Grant County, Washington.

18 On August 20, 1977, Williamson assigned the permit to Konnie
19 Wheeler (hereinafter "Wheeler").

20 II

21 On August 25, 1977, the Department received an application for a
22 change in place of use and point of diversion for Permit No. QB-37A in the
23 name of Konnie Wheeler. The proposed change in place of use and point of
24 diversion sought to move the permit from land located in Section 23 to
25 land located within the south half of the north half of the southwest
26 quarter of Section 24, Township 18 North, Range 24 E.W.M., Grant County,

27 FINAL FINDINGS OF FACT,

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1 Washington. The application for the change indicated that Wheeler was
2 the owner of the two 20-acre parcels of land in Section 23 and was the
3 owner of land which was the new proposed place of use. Wheeler is the
4 owner of the land which was the new proposed place of use, but was not
5 the owner of the two 20-acre parcels of land located in Section 23. At
6 the time the application for a change was made, Williamson held a long-
7 term lease on the Wheeler property.

8 III

9 On September 2, 1977, the Department's technical committee reviewed
10 and approved Wheeler's application for a change in place of use and
11 point of diversion.

12 IV

13 On January 12, 1978, the Department received a proof of appropriation
14 notice from Wheeler which stated that the water authorized under Permit
15 No. QB-37A had been put to full beneficial use on the south half of the
16 north half of the southwest quarter of Section 24, Township 18 North,
17 Range 24 E.W.M., Grant County, Washington. No water had been put to
18 beneficial use on Williamson's two 20-acre parcels in Section 23 as
19 identified in the subject permit.

20 V

21 On January 23, 1978, the Department issued a superseding permit for
22 QB-37A which changed the point of withdrawal and place of use of the water
23 to the south half of the north half of the southwest quarter of Section 24.
24 On January 27, 1978, the Department learned that Wheeler did not own the
25 two 20-acre parcels of land in Section 23.

26
27 FINAL FINDINGS OF FACT,
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1 VI

2 On March 13, 1978, the Department sent a letter to Wheeler in
3 Portland, Oregon, regarding Permit No. QB-37A which stated that the
4 construction schedule for the project had not been complied with and that
5 Wheeler had 60 days from the date of receipt of the letter to show cause
6 why the permit should not be cancelled.

7 On April 14, 1978, an Order cancelling the superseding permit which
8 had been issued on January 23, 1978 was sent to Wheeler at his home
9 address in Portland, Oregon. The Findings of Fact and Report of
10 Examination upon which the cancellation order was based were apparently
11 not received by Wheeler. Appellants did not appeal the Order cancelling
12 the superseding permit.

13 On May 12, 1978, appellants' agent sent a letter to the Department
14 indicating that Permit No. QB-37A had not been constructed or developed
15 at the time because of depressed economic conditions and the fact that
16 the parties did not have the funds to develop the project.

17 VIII

18 On June 1, 1978, the Department cancelled Permit No. QB-37A on the
19 grounds that the development schedule of the permit had not been complied
20 with and that water had not been put to beneficial use by March 11, 1978.
21 The Department's action was appealed to this Board.

22 IX

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings, the Board comes to these

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over the persons and subject matter of
4 this proceeding, which is the appeal from the cancellation of Ground
5 Water Permit No. G3-01290P (QB-37A) dated June 1, 1978.

6 II

7 This Board has no jurisdiction to review Department decisions from
8 which no appeal was taken within the time period set forth in RCW 43.21B.
9 120 and RCW 43.21B.230.

10 III

11 The Department acted within its authority in regulating artificially
12 stored ground water in the Quincy Ground Water Subarea. Although the
13 Department's statutory authority is not specific, there is authority to
14 regulate the subject artificially stored ground water under RCW 90.44,
15 RCW 43.21A, and RCW 43.27A.

16 IV

17 Appellants have not shown that the Department acted incorrectly in
18 cancelling the permit. Accordingly, the Department's action cancelling
19 Ground Water Permit No. QB-37A should be affirmed.

20 V

21 Any Finding of Fact which should be deemed a Conclusion of Law
22 is hereby adopted as such.

23 From these Conclusions, the Board enters this

24 ORDER

25 The action of the Department of Ecology in cancelling Ground Water
Permit No. G3-01290P (QB-37A) is affirmed.

27 FINAL FINDINGS OF FACT,
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1 DATED this 24th day of January, 1979.

2 POLLUTION CONTROL HEARINGS BOARD

3 Dave J. Mooney
4 DAVE J. MOONEY, Chairman

5 Chris Smith
6 CHRIS SMITH, Member

7 David A. Akana
8 DAVID A. AKANA, Member

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27 FINAL FINDINGS OF FACT,
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